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United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510-6075

November 1, 2007

Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chairman Cox:

The regulation of the proxy process is a fundamental activity of the Commission. The Senate Committee on Banking and Currency in its Report on the Federal Securities Exchange Act of 1934 discussed the importance of proxies and said "[i]n order that the stockholder may have adequate knowledge as to the manner in which his interests are being served, it is essential that he be enlightened not only as to the financial condition of the corporation, but also as to the major questions of policy which are decided at stockholders' meetings" (April 17, 1934, page 12).

As Members of the United States Senate Committee on Banking, Housing and Urban Affairs, we feel that shareholders' right to place their proposals on the proxies of the public companies they own is extremely important. It benefits both shareholders and the public companies they own.

Shareholders are the owners of a public company and have a right to meaningfully participate in electing directors without incurring an undue cost of a separate proxy solicitation. It is our view that shareholders should continue to have a right to propose a procedure for electing directors under the current Commission shareholder proposal process and should have a right to nominate alternative directors to those selected by management.

Accordingly, we are submitting to you our comments on the proposals set forth in Commission Release No. 34-56160, IC-27913, File No. S7-16-07 and Commission Release No. 34-56161, IC-27914, File No. S7-17-07, which relate to the proxy access and the shareholder proposal process. In our view, the current process and rules should be maintained and neither proposal should be adopted.

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It is our judgment that the securities markets and investors would best be served by adopting no new rule at this time; the Commission should not adopt either of the proposals. Instead, the Commission should allow shareholders to make proposals pursuant to its current rules and the standards set forth in the decision of the United States Circuit Court of Appeals for the Second Circuit in *American Federation of State, County & Municipal Employees, Employees Pension Plan v. American International Group*, 462 F.3d 121 (2d Cir. 2006). The Court's ruling clarified that, absent a Commission restatement regarding the application of the rules, the current Commission rules allow investors to file proposals related to a process for providing shareholder access to the corporate proxy statement for inclusion in their companies' proxy materials. Permitting the post-AIG status quo to continue would protect shareholders' existing rights, which is an important consideration. This approach could enhance director performance and make directors more attentive to investor concerns and values.

We note that the Commission in 1976, when it last amended the substance of the shareholder proposal rule at issue, stated that the rule permitted shareholder proposals regarding the process for electing directors. We believe this is the appropriate interpretation of the rule. The Second Circuit Court of Appeals, in its review of this rule in *AFSCME v. AIG*, observed:

> The 1976 Statement clearly reflects the view that the election exclusion is limited to shareholder proposals used to oppose solicitations dealing with an identified board seat in an upcoming election and rejects the somewhat broader interpretation that the election exclusion applies to shareholder proposals that would institute procedures making such election contests more likely.

The Commission held this position for sixteen years, until the staff of the Division of Corporation Finance reversed it in a no-action letter in 1990 for reasons that it chose not to disclose. The Second Circuit Court of Appeals in *AFSCME v. AIG* stated the "SEC has not provided, nor to our knowledge has it or the Division ever provided, reasons for its changed position regarding the excludability of proxy access bylaw proposals."

The Court also said the Commission has a duty to explain its departure from prior norms and we agree. It is advisable that the Commission require the staff to maintain a transparent record and to explain material changes in agency interpretations they make in the no-action process. The implementation and monitoring of such a policy is necessary to preclude any perception of staff arbitrariness or favoritism towards certain proponents or their representatives.